must know the impression they will produce; hence in an action for defamation his knowledge is not a subject of inquiry. In the instances that have been cited, however, it would be unjust to allow recovery unless the publisher knew or had reason to know the disapproving mental attitude of his auditors or readers toward the idea his words convey. Hence in this latter class of cases courts might well, with Mr. Odgers, refuse to allow an action for defamation, and compel recourse to the inclusive action on the case.[5] It appears unnecessary, however, further to require, as that learned authority does, a malicious intent or reckless indifference on the defendant's part to the ensuing injury.[6] One may incur liability by violating with no evil intent[7] the similar right of privacy, and it is urged that negligent misrepresentation causing damage should be ground for suit.[8] The duty to abstain from words of the truth of which the speaker is not assured, and which he has reason to believe will injuriously affect another, does not seem onerous.[9]

A Repudiation of the Doctrine of Incorporation by Reference. — The doctrine is firmly established in England that an unattested document will be admitted to probate with a will if referred to in the will as an existing document, and if actually in existence at the time of the execution of the will. This rule rests on the fiction that the unattested document is incorporated into the will by the reference, and is thus supported by the formalities attending the execution of the will itself.[1] It was sought to invoke this doctrine in New York to avoid the strict interpretation there obtaining of a statute similar to the English Wills Act, requiring the signature of the testator to appear at the end of the will. Because of the limited space in printed blanks wills had been drawn with some parts of the body of the will following the signature of the testator, and connected with the main part of the will by references. Wills so drawn were not in conformity with the statute as interpreted by the New York courts, which held that the statute referred to the physical, literal end of the writing,[2] and not, as the English courts tend to hold, to the end of the sequence of meaning.[3] Such wills were held bad, on the ground that the doctrine of incorporation by reference did not apply.[4]

These decisions seem correct, for the doctrine of incorporation by reference should and does apply only to documents that are not an integral part of the will. In the cases mentioned, the writing following the signature was a part of the will itself, and it would seem incongruous to speak of incorporating it with that of which by the intention of the testator it was already a part. According to the New York interpretation of the statute, no part

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[5] See Odgers, Libel and Slander, 4th ed., 102; Knight *v.* Blackford, 3 Mackey (D. C.) 177.

[6] But see Spotorno *v.* Fourichon, 40 La. An. 423; Morasse *v.* Brochu, 151 Mass. 567.

[7] See Pavesich *v.* New England, etc., Co., *supra.*

[8] See 14 Harv. L. Rev. 184.

[9] See Capital, etc., Bank *v.* Henty, 7 App. Cas. 741, 772.

[1] Allen *v.* Maddock, 11 Moo. P. C. 427.

[2] Matter of O'Neil, 91 N. Y. 516; Matter of Conway, 124 N. Y. 455.

[3] Goods of Kimpton, 3 Sw. & Tr. 427.

[4] Matter of Andrews, 162 N. Y. 1; *contra,* Baker's Appeal, 107 Pa. St. 381.

of the will, not even the part that preceded the signature, would be admitted to probate, though the part subsequent to the signature were abandoned.[5] The obvious reason is that the whole was a unit. On the other hand, reference to an extraneous document does not make it literally a part of the writing that refers to it, even though it be physically annexed, for it is only by a fiction that it is incorporated into the attested writing. In such a case the signature at the end of the will proper is a sufficient compliance with the statute; and this would seem to be true where the extraneous document is physically annexed after the signature as well as where it is physically separated. If the extraneous document is rejected because, for instance, the reference is too uncertain, the will itself will properly be admitted to probate.[6] A recent decision of the Appellate Division of the Supreme Court of New York, however, rejected the whole doctrine of incorporation by reference, citing the above-mentioned cases as authorities, and failing to draw the distinction suggested. *In re Emmons' Will*, 96 N. Y. Supp. 506. This decision, then, must be considered an arbitrary repudiation of the English rule, previously accepted in New York[7] as well as in many other jurisdictions in this country,[8] and apparently rejected in none, though questioned in Connecticut.[9] It is to be remarked, however, that the present case is supported by an unnoticed New York decision,[10] to which there was no allusion in subsequent decisions, containing *dicta* accepting the doctrine of incorporation by reference.[11]

THE RELATION BETWEEN BROKER AND PRINCIPAL IN MARGIN TRANSACTIONS. — It is customary for a broker purchasing stock on margin for a client by advancing upon interest the money required for the purchase in addition to the margin deposited, to have the shares registered in his own name, and, without attempting to keep separate the identical certificates purchased upon a particular client's order, to pledge them for his own debts.[1] Although these customs are well established, the American decisions interpreting them are not harmonious. Most courts, following New York decisions, describe the relation between principal and broker as that of pledgor and pledgee. The broker, it is held, acts properly in taking title to the stock in his own name.[2] Moreover, as shares of stock are fungible, he need not keep separate or retain those purchased for a particular customer; but he must keep under his control sufficient shares of a like kind

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[5] Matter of Hewitt, 91 N. Y. 261. But the strictness of this rule has been relaxed in cases where the part subsequent to the signature is held immaterial. Baker *v.* Baker, 51 Oh. St. 217.

[6] Wood *v.* Sawyer, 61 N. C. 251.

[7] Tonnele *v.* Hall, 4 N. Y. 140; *cf.* Jackson *v.* Babcock, 12 Johns. (N. Y.) 389, 394.

[8] Skinner *v.* American Bible Society, 92 Wis. 209; Newton *v.* Seaman's Friend Society, 130 Mass. 91; Fickle *v.* Snepp, 97 Ind. 289; Gerrish *v.* Gerrish, 8 Ore. 351; Pollock *v.* Glassell, 2 Gratt. (Va.) 439, 468; Harvy *v.* Chouteau, 14 Mo. 587; Beall *v.* Cunningham, 3 B. Mon. (Ky.) 390. But *cf.* Sharp *v.* Wallace, 83 Ky. 584. See also Johnson *v.* Clarkson, 3 Rich. Eq. (S. C.) 305; Hunt *v.* Evans, 134 Ill. 496.

[9] Phelps *v.* Robbins, 40 Conn. 250, 271; Bryan's Appeal, 77 Conn. 240.

[10] Booth *v.* Baptist Church, 126 N. Y. 215, 247.

[11] See Vogel *v.* Lehritter, 139 N. Y. 223.

[1] 1 Dos Passos, Stock-brokers and Stock-exchanges, 187, 251; Markham *v.* Jaudon, 41 N. Y. 235, 239.

[2] Horton *v.* Morgan, 19 N. Y. 170.